Hill Industries, Inc., Hill Precision, Inc., Hill Precision, Inc. as Debtor-in-Possession, and BTS New York, Ltd., a wholly owned subsidiary of Biotec Systems, Ltd. *and* United Industry Workers Local 424, a Division of United Industry Workers District Council 424. Cases 29–CA–15701, 29–CA–15783, and 29–CA–18515

April 5, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND COHEN

On August 31, 1995, Administrative Law Judge James F. Morton issued the attached decision. The General Counsel filed exceptions and a supporting brief, and Respondent BTS filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[1] and conclusions as modified herein and to adopt the recommended Order.

[1] The General Counsel has excepted to the judge's characterization of Biotec Systems, Ltd. as a party-respondent in this case. We find merit to that exception. The General Counsel has the sole authority to name the party-respondents in his complaint, and whatever ambiguity exists in the complaint concerning the status of Biotec Systems has been resolved by the General Counsel in his exceptions and brief. Contrary to the General Counsel, however, we find no evidence that the judge's misperception compromised his other findings.

We adopt the judge's finding that Respondent BTS New York, Ltd. is not the alter ego of the other Respondents because of their materially different respective ownership interests. In so doing, we note that the Board has found employers to be alter egos despite the absence of common ownership. On those occasions, however, either the businesses in question were wholly owned by members of the same family or nearly entirely owned by the same individual, or the older business exerted substantial control over the business supposedly sold to the new company. See *Hartman Mechanical, Inc.*, 316 NLRB 395, 401–402 (1995). None of those conditions exists here. In adopting the judge's rejection of the alter ego allegation, we do not rely on his finding that BTS differed markedly from Precision in operation and equipment.

We find no merit to the General Counsel's contention that an adverse inference should be drawn from the Respondents' failure to produce work orders in response to the General Counsel's subpoena. The subpoena requested, in relevant part, records that would identify the Respondents' customers and the amounts of work done for each customer. There is no indication, and the General Counsel does not contend, that other relevant documents, such as invoices and purchase orders, were not produced pursuant to the subpoena. In addition, the record indicates that, with regard to work orders, whether or not specific documentation would be retained or discarded depended on the job. Under these circumstances, although the work orders should have been produced, it has not been established that, in failing to do so, the Respondents were attempting to conceal evidence detrimental to their case, and we decline to draw the adverse inference requested.

The General Counsel has excepted to the judge's failure to find Respondent BTS New York, Ltd. (BTS) to be a *Golden State*[2] successor to Respondent Hill Precision, Inc. (Precision). The General Counsel argues that BTS acquired the business of Precision with knowledge of Precision's unfair labor practices, and operated the business in basically unchanged form, and therefore should be held responsible for remedying Precision's unlawful conduct.[3] We find no merit to this exception.

I. NATURE OF ESTABLISHMENT OF BTS OPERATIONS

The record shows that BTS did not acquire the business of Precision. Although BTS leased the same facility and much of the heavy equipment formerly leased and used by Precision,[4] the only assets BTS acquired from Precision were some materials which BTS purchased for about $3500. Precision also agreed to allow BTS to use certain other Precision equipment in return for Precision's being allowed to store the equipment at the BTS facility. Although the latter equipment apparently has a market value of around $150,000, the record does not disclose the extent of its actual use by, and thus its practical value to, BTS. In addition, the agreement is terminable by either party on 30 days notice to the other.

In *Glebe Electric*, 307 NLRB 883 (1992), the Board rejected the General Counsel's contention that Aneco Co. was the *Golden State* successor to Glebe Electric, even though Aneco had taken over a contract abandoned by Glebe, using some of the same facilities. The Board noted that the rationale stated in *Golden State* and *Perma Vinyl* for imposing liability on a purchaser for the unfair labor practices of the seller is that the purchaser can reflect its potential liability in the negotiated purchase price or through indemnification by the seller. The Board found that there was no business relationship between Glebe and Aneco and that Aneco had not acquired anything of value from Glebe. Aneco thus had no opportunity to insulate itself from liability for Glebe's violations.

We find that the same considerations apply here. Even though, in contrast with *Glebe Electric*, BTS did purchase some $3500 in materials from Precision, their

[2] *Golden State Bottling Co. v. NLRB*, 414 U.S. 168 (1973).

[3] See *Golden State Bottling v. NLRB*, supra; *Perma Vinyl Corp.*, 164 NLRB 968 (1967). When we refer to Precision's unfair labor practices, we also include those committed by Precision's predecessor, Hill Industries, Inc.

[4] The facility and equipment were owned by Ruth Ochs, the mother of Gerald Ochs, who was the president and sole owner of Hill Industries and Precision, and who was hired as vice president for manufacturing by Biotec Systems after Precision ceased operations. Ruth Ochs had no ownership interest in any of the corporate entities here; the lease agreement apparently was the product of arm's-length negotiations in which she was represented by counsel.

value was relatively small in comparison with BTS' potential exposure for Precision's unfair labor practices. The full extent of that exposure is not disclosed in the record. However, the trustees of the welfare and retirement funds obtained a default judgment against Precision in March 1993 for more than $53,000, reflecting Precision's failure to make contractually required contributions to the funds. At the time of the hearing, that judgment had not been satisfied. Moreover, the Respondents' failure to make the required contributions continued well into 1994. Thus, taking into account the additional liability for the contributions that were not made following the court judgment and any interest on the sums due and owing, BTS' potential liability for the unfair labor practices committed by Precision and Hill Industries apparently would greatly exceed $53,000. It would have been impossible for BTS to offset a potential liability of that size by negotiating over the purchase price of the materials. Even assuming arguendo that Precision was willing to part with the materials for free, BTS' $3500 aggregate purchase from Precision would scarcely have made a dent in BTS' potential liability for Precision's unfair labor practices.

Nor does the agreement by which BTS allowed Precision to store certain other equipment in BTS' facility in return for BTS' being allowed to use that equipment constitute a business relationship sufficient to establish a *Golden State* successorship. As we have stated, the record does not disclose the extent to which BTS actually used this other equipment. And because the agreement allowed either party to terminate the arrangement on a month's notice, neither BTS nor Precision could have known at the time the agreement was reached how long they could expect to benefit from it. In these circumstances, it is difficult if not impossible to know what practical benefit BTS received as a result of the agreement. Thus, the record fails to show that, in negotiating over the terms of its equipment-storage-and-use agreement with Precision, BTS could have effectively insulated itself from potential exposure to liability for Precision's unfair labor practices. Nor does it show that BTS could have secured indemnification from Precision as part of this transaction.

Accordingly, we find that the overall nature of the establishment of BTS operations was ultimately not of a type under which BTS could have effectively negotiated a method of insulation from liability for Precision's unfair labor practices.

II. NATURE OF BTS OPERATIONS

We find that another equally important consideration militates against holding BTS liable for the unfair labor practices of the other respondents. Although similar to Precision in many ways,[5] BTS was established with one end in mind: to serve as the manufacturing arm of its corporate parent, Biotec Systems, which was engaged in developing a prototype industrial scale garbage composter. BTS thus was not a custom metal fabricator producing a broad spectrum of products for a wide variety of customers, as Precision had been; BTS kept only about six of Precision's several hundred customers while expending the overwhelming majority of its efforts on behalf of Biotec. Indeed, so completely was BTS devoted to Biotec's operations that, when the prototype had been completed and Biotec discontinued its funding, BTS shut down its facility rather than seek business from other customers. In our view, this significant difference between the corporate missions of the two entities weighs heavily against a finding that BTS is the *Golden State* successor to Precision.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondents, Hill Industries, Inc., Hill Precision, Inc., and Hill Precision, Inc., Debtor-in-Possession, Deer Park, New York, their officers, agents, successors, and assigns, shall take the action set forth in the Order.

[5] BTS leased the same facility and heavy equipment that had formerly been leased by Precision. Biotec also hired Gerald Ochs as its vice president for manufacturing and assigned him to run the new manufacturing operation for BTS. Ochs hired a few of Precision's former employees and retained many of Precision's suppliers as well as a few of its customers.

Emily DeSa, Esq., for the General Counsel.
Lewis Goldberg, Esq. (Richard M. Greenspan, P.C.), of Ardsley, New York, for the Charging Party.
Roy H. Landy[1] and *Francis X. Casale, Esqs.*, of Melville, New York, for Respondents BTS New York, Ltd. and Biotec Systems, Ltd.
Steven M. Coren, Esq. (Steven M. Coren, P.C.), of New York, New York, for Respondents Hill Industries, Inc., Hill Precision, Inc., and Hill Precision, Inc., Debtor-in-Possession.[2]

DECISION

JAMES F. MORTON, Administrative Law Judge. The essential issue is whether BTS New York, Ltd. (BTS), and its parent company, Biotec Systems, Ltd. (Systems), are the alter ego of, or successor to, Hill Precision Inc. (Precision) and Hill Precision Inc., Debtor-in-Possession (Precision-DIP). The complaint alleges that BTS and Systems, in violation of Section 8(a)(1) and (5) of the National Labor Relations Act

[1] Landy withdrew as counsel after the first hearing day.
[2] Coren, having represented that his clients in this case have no assets, requested and was granted permission to withdraw from this case.

(the Act), unlawfully withdrew recognition from United Industry Workers Local 424, a Division of United Industry Workers District Council 424 (Local 424) as the collective-bargaining representative of its production and maintenance employees and also failed to honor the collective-bargaining agreement Precision had signed with the Union covering those employees.

Precision[3] and Precision-DIP are alleged to have been the successor to Hill Industries, Inc. (Industries). Industries, Precision, and Precision-DIP (whose status is described in fn. 3) are alleged to have failed and refused to honor certain terms of the collective-bargaining agreements they had with Local 424 which required them to make timely dues and trust fund payments. The General Counsel thus contends that Industries, Precision, and Precision-DIP have also engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act.

I heard this case in Brooklyn, New York, on March 22, July 12, and July 13, 1995. On the entire record,[4] including my observation of the demeanor of the witnesses, and after considering the briefs filed by counsel for the General Counsel and counsel for Systems and BTS, I make the following

FINDINGS OF FACT

I. JURISDICTION

Industries, a New York corporation, was engaged in the business of custom metal fabrication at its plant in Deer Park, New York. In its operations annually, it met the Board's nonretail standard for asserting jurisdiction. As discussed further below, Precision and Precision-DIP took over the operations of Industries there. Their operations also met the Board's nonretail standard.

BTS, a New York corporation, is a wholly owned subsidiary of Systems, a Delaware corporation. Both are nonretail enterprises and each meets the Board's standard for asserting jurisdiction.

II. LABOR ORGANIZATION

The uncontroverted testimony establishes, and I so find, that Local 424 meets the criteria set out in the Act defining a labor organization.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *The Relationship of Industries, Precision, and Precision-DIP with the Union*

Industries had a contract, effective July 1, 1990, through June 30, 1993, with Local 424 which covered its production and maintenance employees at its Deer Park facility, and which required it to make periodic payments to the Local 424 Welfare Fund and to the Local 424 Retirement Plan. The contract also required it to deduct union dues from the wages of those employees and to remit those dues to Local 424. Gerald Ochs was the sole stockholder and president of Industries and was responsible for its day-to-day operations. In 1991, Precision took over Industries' operations at Deer Park. Ochs was its president and sole stockholder. Precision signed a contract with Local 424, similar in format to the Industries' contract but with several modifications. Precision signed a renewal agreement, effective March 7, 1994, to March 7, 1997. Precision went into backruptcy but continued operations as Precision-DIP until July 11, 1994, when Precision's petition for bankruptcy was dismissed. In the latter part of the preceding month, as discussed further below, the unit employees had been laid off when the Deep Park facility was shut down based on Ochs' decision to go out of business.

It is undisputed that, since November 1990, Industries, Precision, and Precision-DIP failed to make, and delayed in making, payments to the Welfare and Retirement Funds discussed above and dues remittances to Local 424. By these failures and delays, these respondents have violated Section 8(a)(1) and (5) of the Act. See *Peerless Roofing Co*., 247 NLRB 500 (1977), and *Detroit Cabinet & Door Co*., 247 NLRB 1415 (1980).

B. *BTS and Systems as the Alleged Alter Ego[5] or Successor to Precision and Precision-DIP*

1. Precision's operations

As noted above, Gerald Ochs was the sole owner of Precision and controlled its day-to-day operations. He had established Precision in early 1991 while Industries was still operating. Precision initially had been formed to provide administration and engineering services for one customer. Industries did the fabrication work for that customer and for hundreds of others. In May 1991, Industries ceased operating and Precision took over. It operated the Deer Park facility under an oral lease from Ochs' father and, on his death, from his mother. The lease also covered all the equipment there which included various types of cutting, bending, drilling, and welding machines. Precision was engaged in custom metal fabrication. It had about 15 employees who made a large variety of products, ranging across the full spectrum of products manufactured in a metal fabrication shop, including chairs, drums, kiosks, and steel arches. It had about 600 customers and averaged about 200 jobs a month. One of those jobs was for a drum to be made in the summer of 1993 for Biowaste Technologies which apparently was intended by Biowaste to become part of a garbage composting operation, a business interest for which BTS and Systems was formed, as discussed further below. That job was not finished. Precision earned about $30,000 for that work, an amount which was about 2 percent of its annual gross income.

[3] Precision filed for Bankruptcy under Chapter 11 on August 9, 1993, and was designated as debtor-in-possession until July 11, 1994, when its petition was dismissed. Precision, as debtor-in-possession, is referred to in this decision as Precision-DIP.

[4] The pages of the hearing transcript for July 12 and 13, 1995, have been erroneously numbered as pp. 1 through 183. P. 1 of the July 12 transcript should have been numbered as p. 97 and the pages thereafter should be renumbered as 98, 99, etc.

[5] At the hearing during discussion of Systems' status, I mistakenly remarked that Systems was not a party to this case, a remark to which the General Counsel indicated assent. The complaint clearly designates Systems and BTS as respondents. Moreover, the status of these two corporations has been fully litigated. In that regard, cf. *Gartner-Hoff Co*., 308 NLRB 531 at fn. 3 (1992), there.

2. The formation and operations of BTS and Systems

Augustin Arrau, an engineer, had been the principal officer of Biowaste Technologies, referred to above. That company appears to have experienced some internal discord, resulting in its demise. In any event, Arrau, in conjunction with venture capitalists from South America, undertook in early 1994 and at the invitation of the United Nations, to compete with General Electric and Westinghouse in developing an agricultural composting mechanism. The United Nations hoped to have available, by October of that year, prototypes to be exhibited to heads of state of various third world countries and hoped too that they would then place orders for the building of full-scale mechanisms, ultimately to enhance food production in those countries. Arrau and others formed Systems in early 1994 to develop a prototype mechanism. They also formed BTS then as the manufacturing arm of Systems.

In late June 1994, Precision stopped operating. About that same time, Arrau approached Ochs to discuss the use of Precision's facilities in conjunction to develop the prototype. Ochs informed him that Precision was out of business and that Ochs himself was looking for employment. On July 1, 1994, Ochs signed a 2-year employment contract with Systems which provided that he would be vice president of manufacturing for its subsidiaries. The contract gave Ochs an option to purchase a small portion of Systems' stock, an option he never exercised.

BTS and Systems began to use the Deer Park facility in about mid-July 1994. Ochs, as BTS' vice president for manufacturing, had the responsibility of hiring employees to do the metal fabrication and related work for the prototype. Toward the end of that month, Ochs hired two employees, both of whom had worked for Precision. He set their wage rates and benefits, after consulting with Arrau. Ochs got Arrau's approval for BTS to do a small amount of work for six former customers of Precision, some of whom were longtime associates of Ochs. The volume of that work comprised about 1 percent of BTS' production. The remaining 99 percent was devoted to the prototype being developed by Arrau.

The prototype was a demonstator test model, 70 feet in length, of a composting system able to process, over a 3–5-day period, 15 tons of solid waste into clean humus for use as agricultural fertilizer. If the test model system proved successful, Systems planned to build to order full scale operational systems, each the length of a football field in size and capable of processing many thousands of tons of waste in a 3–5-day period.

The prototype that Arrau developed was named Biotech 2120. Arrou held patents on it and valuable proprietary information was used in its construction. In addition to the shaping and welding of sheet metal done under Ochs' supervision, Arrau, who was in overall charge and often revised plans as work progressed, engaged outside contractors and consultants who worked at the Deer Park facility installing computerized controls to regulate the use of microbiological elements in reacting with the waste materials. Laboratory units were installed in the Deer Park facility for microbiological testing. The entire composting process required continuous automated adjustments by computerized controls to ensure that decomposition of the waste would produce clean humus. The automation was characterized in the testimony before me as ''a heuristic system that reads and reacts and thinks and solves problems.''

Biotech 2120 was completed and was exhibited in Chicago for various heads of state. Biotech, Arrau, and other investors continued to supply BTS with capital until May 1995 at which point it became dormant, to be revived if Systems receives an order for an operational system.

BTS had signed a lease with Ochs' mother to use the Deer Park facility and the equipment there. Ochs, as vice president of BTS, hired, as its office manager, the same person who had served in that capacity for Precision. He hired several more former employees of Precision to work under his supervision in performing the metal fabrication aspect of the composting system as blueprinted by Arrau. Systems set up a bank account on which Ochs drew to pay employee wages and some other costs, such as cleaning expenses. As occasion demanded, Arrau and others supplemented that account with personal funds.

A former employee of Precision testified for the General Counsel that, in 1993, Ochs had said that he did not want Local 424 in his shop, that it was a large burden on his business. The circumstances, discussed above, under which BTS began operations at the Deer Park facility and the remoteness in time of that remark in relation to the time that BTS began operating, render that comment by Ochs immaterial to the issues before me, particularly in view of the discussion below of the critical factors to be used in resolving the issues in this case.

3. Analysis

In determining alter ego status, clearly each case must turn on its own facts, but generally the Board has found alter ego status where the two enterprises have ''substantially identical'' management, business purpose, operation, equipment, customers, and supervision, as well as ownership. See *Johnstown Corp*., 313 NLRB 170 (1993), and cases cited there. In the instant case, Systems-BTS differ markedly from Precision in ownership, controlling management, business purpose, operation, equipment, and customers. At best, Ochs and the several former Precision employees who worked under him at Systems-BTS constituted a metal fabrication component in the making of a highly specialized product, a product built on speculation. This was in sharp contrast to the nature of the work Precision did which involved producing a myriad of items for immediate use by numerous customers. To some extent, the former Precision employees working under Ochs' immediate supervision appear to have been an identifiable group while in the employ of BTS-Systems. That consideration and others relied on by the General Counsel (e.g., that Ochs at one point had an option to buy a small interest in BTS; that he hired the same person who was Precision's office manager as BTS' office manager; that the same sanitation company was used by Systems-BTS as was used by Precision; that Ochs was permitted to accept orders from a handful of Precision's former customers; and that Systems-BTS leased the same equipment and plant that Precision had used) are insufficent to offset the significant differences in ownership, business purpose, customers, and other matters noted above. The materially different ownership interests in this case alone preclude a finding of alter ego. See *Hartman Mechanical*, 316 NLRB 395 (1995). I thus find that Systems-BTS was not the alter ego of Precision.

The General Counsel's alternatively contends that Systems-BTS is the successor to Precision. It has long been set-

tled that an employer succeeds to the collective-bargaining obligation of another employer if (1) a majority of its employees had been employed by the predecessor, and if (2) similarities between those two operations manifest a ''substantial continuity'' between those enterprises. See *CitiSteel, USA, Inc*., 312 NLRB 815 (1993), and cases cited there. The Board further noted in that case that the factors to look to in determining whether there is a substantial continuity are:

> [W]hether the business of both employers is essentially the same; whether the employees of the new company are doing the same jobs in the same working conditions under the same supervisors; and whether the new entity has the same production process, produces the same products, and has basically the same body of customers.

These factors are set forth in the conjunctive. In the instant case, it is readily apparent that the business of Systems-BTS and that of Precision are not the same. The new entity, Systems-BTS, did not have the same production process as Precision's. Precision in 1993 had begun to fabricate a large drum for Biowaste but that constitued an insignificant portion of Precision's business. In mid-1994, BTS used several former employees of Precision under Ochs' supervision to fabricate a somewhat similar container but their work was closely integrated with the installation of sophisticated computerized and microbiological functions at the Deer Park facility, all under Arrau's direction. BTS had no customers, other than 6 former customers of Precision who were serviced kept as an accomodation to Ochs; Precision had about 600.

The Board, in *CitiSteel*, stated that the ''factors [i.e.—those noted above] are to be assessed primarily from the perspective of the employees as to whether those employees who have been retained will . . . view their job situations as essentially unaltered.'' In that context, the immediate job functions of the former Precision employees in working for BTS appear to have been essentially unaltered in that they worked under Ochs from customer blueprints as they had done before. Yet, it cannot be said that their job *situations*, while in the employ of BTS, were essentially unaltered. Their work was functionally integrated with the work being performed by outside technicians and professionals working alongside them on an experimental project, one which could prove to be boom or bust. In contrast to their jobs with Precision where they made a great variety of small items for many customers, they were, while with BTS, engaged in an integrated process aimed at developing a unique, experimental prototype. In weighing the evidence bearing on the cited factors and assessing them from the employees' perspective as to whether their job situations remained unaltered, I find the evidence insufficient to establish that Systems-BTS was the successor to Precision.

CONCLUSIONS OF LAW

1. Each Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. Local 424 is a labor organization within the meaning of Section 2(5) of the Act.

3. Industries, Precision, and Precision-DIP have each engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act by having failed to remit, and delayed in remitting, to Local 424 dues and initiation fees it was obligated to deduct and transmit to Local 424 in accordance with the terms of their respective collective-bargaining agreements with Local 424 and by having failed to make payments, and by having delayed in making payments, to the Welfare Fund and to the Retirement Plan, as provided for in those agreements.

4. The unfair labor practices described in the above paragraph affect commerce within the meaning of Section 2(6) and (7) of the Act.

5. Systems and BTS did not commit any of the unfair labor practices alleged in the complaint.

REMEDY

Having found that Industries, Precision, and Precision-DIP have engaged in unfair labor practices within the meaning of Section 8(a)(1) and (5) of the Act, I shall recommend that they be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

They shall be ordered to pay to the Welfare Fund and to the Retirement Fund referred to above contributions that have not been paid, with any additional amounts as set forth in *Merryweather Optical Co*., 240 NLRB 1213 (1979), and also to make whole unit employees for any losses attributable to their failures to make the contractually required payments, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1980), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). In addition, they shall be ordered to reimburse Local 424, with interest as prescribed in *New Horizons*, supra, for union dues and initiation fees that they failed and refused to remit to Local 424, as required by the provisions of their collective-bargaining agreements. The viability and obligations of Industries, Precision, and Precision-DIP should be left to compliance. See *Gartner-Hoff Co*., 308 NLRB 531 (1992).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[6]

ORDER

The Respondents, Hill Industries, Inc., Hill Precision, Inc., and Hill Precision, Inc., Debtor-in-Possession, Deer Park, New York, their officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to remit, or delaying in remitting, union dues and initiation fees which are to be remitted as required by the terms of a collective-bargaining agreement.

(b) Failing to make payments, or delaying payments, to benefit funds as required by any such agreement.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

[6] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Make the contractually required payments to the Local 424 trust funds, reimburse Local 424 for the dues and initiation payments required to have been withheld, and make the unit employees whole in the manner as set forth above in the remedy section.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its Deer Park, New York facility copies of the attached notice marked ''Appendix.''[7] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondents' authorized representative, shall be posted by the Respondents immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondents to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondents have taken to comply.

IT IS FURTHER ORDERED that the complaint against BTS New York, Ltd., a wholly owned subsidiary of Biotec Systems, Ltd. is dismissed.

[7] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize

To form, join, or assist any union

To bargain collectively through representatives of their own choice

To act together for other mutual aid or protection

To choose not to engage in any of these protected concerted activities.

WE WILL NOT fail or refuse to make, or delay in making, contractually required payments to trust funds or to remit union dues and initiation fees as required by a collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make payments due the Welfare Fund and the Retirement Plan as required under the collective-bargaining agreements we have or have had with United Industry Workers Local 424, a Division of United Industry Workers District Council 424 and WE WILL make Local 424 whole, with interest, for our failure to pay to it union dues and initiation fees as we were required to do under our agreements with it.

WE WILL make whole, with interest, any employee who suffered a monetary loss by reason of our failure to make payments to the Welfare Fund or to the Retirement Plan.

WE WILL reimburse the Union, with interest, for dues and initiation fees that were or should have been deducted from employee wages under the terms of those collective-bargaining agreements.

HILL INDUSTRIES, INC., HILL PRECISION, INC., AND HILL PRECISION, INC., DEBTOR-IN-POSSESSION